

Gaelle H. Gralnek, State Bar No. 143846  
Dawn S. Theodora, State Bar No. 131593  
CALIFORNIA STATE UNIVERSITY  
OFFICE OF GENERAL COUNSEL  
401 Golden Shore, 4<sup>th</sup> Floor  
Long Beach, CA 90802-4210  
Tel: (562) 951-4500 / Fax: (562) 951-4956  
Email: [ggralnek@calstate.edu](mailto:ggralnek@calstate.edu)  
[dtheodora@calstate.edu](mailto:dtheodora@calstate.edu)

Christopher M. Alston, WSB #18823 (*Pro Hac Vice*)  
FOSTER PEPPER PLLC  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101  
Tel: 206-447-2906 / Fax: 206-749-1904  
Email: [alstc@foster.com](mailto:alstc@foster.com)  
Attorneys for Defendants The Board of Trustees of The  
California State University and California Polytechnic  
State University Foundation

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
NORTHERN DIVISION

In re:

ALBERT STEPHEN MORIARTY, JR.,  
Debtor.

MICHAEL P. KLEIN, Chapter 7 Trustee for the  
Bankruptcy Estate of Albert Stephen Moriarty,  
Jr.,

Plaintiff,

v.

The Board of Trustees of the California State  
University; California Polytechnic State  
University San Luis Obispo; California  
Polytechnic State University Foundation; and  
Doe One through Doe Twenty, inclusive,

Defendants.

Case No. 12-22878-MLB  
U.S. Bankruptcy Court  
Western District of Washington

Adversary No. 9:14-ap-01131-PC

**ANSWER AND AFFIRMATIVE  
DEFENSES TO FIRST AMENDED  
COMPLAINT FOR: (1) AVOIDANCE  
OF FRAUDULENT TRANSFER; AND  
(2) RECOVERY OF AVOIDED  
TRANSFER**

Status Conference:

Date: March 12, 2015

Time: 10:00 a.m. (PST)

Place: United States Bankruptcy Court  
Courtroom #201

1415 State Street, Suite 230  
Santa Barbara, CA 93101-2511

ANSWER TO COMPLAINT AND  
AFFIRMATIVE DEFENSES

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FOSTER PEPPER PLLC  
1111 THIRD AVENUE, SUITE 3400  
SEATTLE, WASHINGTON 98101-3299  
PHONE (206) 447-4400 FAX (206) 447-9700

1 Defendant The Board of Trustees of the California State University, which is the State of  
2 California acting in its higher education capacity, and includes California Polytechnic State  
3 University San Luis Obispo (“Cal Poly”), one of 23 campuses in the CSU system,<sup>1</sup> and  
4 defendant California Polytechnic State University Foundation (the “Foundation,” and  
5 collectively “Defendants”) submit this Answer and Affirmative Defenses to First Amended  
6 Complaint For: (1) Avoidance of Fraudulent Transfer; and (2) Recovery of Avoided Transfer  
7 (the “Amended Complaint”), and respectfully state as follows:

8 **I. ANSWER**

9 1. In answer to Paragraph 1 of the Amended Complaint, Defendants lack sufficient  
10 information to admit or deny the allegations, and therefore deny them.

11 2. In answer to Paragraph 2 of the Amended Complaint, Defendants admit the  
12 allegations.

13 3. In answer to Paragraph 3 of the Amended Complaint, Defendants admit this  
14 adversary proceeding relates to the Bankruptcy Case, but deny the remaining allegations.

15 4. In answer to Paragraph 4 of the Amended Complaint, Defendants deny the  
16 allegations.

17 5. In answer to Paragraph 5 of the Amended Complaint, Defendants admit that to the  
18 extent the Bankruptcy Court has subject matter jurisdiction, Plaintiff’s Claims for Relief are core  
19 proceedings. To the extent any related claims are determined to not be core proceedings,  
20 Defendants assert that such claims require consent to entry of final orders by the bankruptcy  
21 judge, and Defendants hereby provide their consent. Defendants deny all remaining allegations.

22 6. In answer to Paragraph 6 of the Amended Complaint, Defendants admit the  
23 allegations.

24  
25  
26 <sup>1</sup> Plaintiff has erroneously identified in the caption “California Polytechnic State University San  
Luis Obispo” as a separate defendant, but no such legal entity exists.

1           7.       In answer to Paragraph 7 of the Amended Complaint, Defendants lack sufficient  
2 information to admit or deny the allegations, and therefore deny them.

3           8.       In answer to Paragraph 8 of the Amended Complaint, Defendant Board of  
4 Trustees of the California State University is a government entity, created by legislative action,  
5 and is the State of California acting in its higher education capacity and its headquarters are  
6 located in Long Beach, California. Defendants deny that it is incorporated or that it is a  
7 corporation and deny all remaining allegations.

8           9.       In answer to Paragraph 9 of the Amended Complaint, Defendants admit that The  
9 Board of Trustees of the California State University, which is the State of California acting in its  
10 higher education capacity, includes Cal Poly, which is located in San Luis Obispo County,  
11 California, one of 23 campuses in the CSU system. Defendants deny every remaining allegation.

12          10.      In answer to Paragraph 10 of the Amended Complaint, Defendants admit the  
13 Foundation is incorporated as a non-profit entity within the meaning of section 501(c)(3) of the  
14 Internal Revenue Code and is located in San Luis Obispo County, California. Defendants admit  
15 the Foundation accepts charitable donations and gifts that are used to benefit the educational  
16 mission, students and programs at Cal Poly. Defendants admit the Foundation manages, invests  
17 and distributes endowments and gifts for the benefit of the educational mission, students and  
18 programs at Cal Poly. Defendants deny every remaining allegation.

19          11.      In answer to Paragraph 11 of the Amended Complaint, Defendants lack sufficient  
20 information to admit or deny the allegations and therefore deny them.

21          12.      In answer to Paragraph 12 of the Amended Complaint, Defendants deny the  
22 allegations.

23          13.      In answer to Paragraph 13 of the Amended Complaint, Defendants lack sufficient  
24 information to admit or deny the allegations and therefore deny them.

25          14.      In answer to Paragraph 14 of the Amended Complaint, Defendants admit the  
26 allegations.

1           15.     In answer to Paragraph 15 of the Amended Complaint, Defendants lack sufficient  
2 information to admit or deny the allegations of the first sentence, and therefore deny them. As to  
3 the second sentence, Defendants admit that the Debtor was on the Cal Poly football team, but  
4 lack sufficient information to admit or deny the remaining allegations and therefore deny them.  
5 As to the third sentence, Defendants admit that the Debtor was inducted into the Cal Poly  
6 Athletics Hall of Fame and deny any remaining allegations.

7           16.     In answer to Paragraph 16 of the Amended Complaint, Defendants lack sufficient  
8 information to admit or deny the allegations and therefore deny them.

9           17.     In answer to Paragraph 17 of the Amended Complaint, Defendants lack sufficient  
10 information to admit or deny the allegations and therefore deny them.

11          18.     In answer to Paragraph 18 of the Amended Complaint, Defendants lack sufficient  
12 information to admit or deny the allegations and therefore deny them.

13          19.     In answer to Paragraph 19 of the Amended Complaint, Defendants lack sufficient  
14 information to admit or deny the allegations and therefore deny them.

15          20.     In answer to Paragraph 20 of the Amended Complaint, Defendants lack sufficient  
16 information to admit or deny the allegations and therefore deny them.

17          21.     In answer to Paragraph 21 of the Amended Complaint, Defendants lack sufficient  
18 information to admit or deny the allegations and therefore deny them.

19          22.     In answer to Paragraph 22 of the Amended Complaint, Defendants lack sufficient  
20 information to admit or deny the allegations and therefore deny them.

21          23.     In answer to Paragraph 23 of the Amended Complaint, Defendants lack sufficient  
22 information to admit or deny the allegations and therefore deny them.

23          24.     In answer to Paragraph 24 of the Amended Complaint, Defendants lack sufficient  
24 information to admit or deny the allegations and therefore deny them.

25          25.     In answer to Paragraph 25 of the Amended Complaint, Defendants admit the  
26 allegations.

1           26.     In answer to Paragraph 26 of the Amended Complaint, Defendants lack sufficient  
2 information to admit or deny the allegations and therefore deny them.

3           27.     In answer to Paragraph 27 of the Amended Complaint, Defendants admit the  
4 Scoreboard Fund Agreement was executed in April 2009. As for the parties to the Agreement  
5 and the signatories on the Agreement, the Agreement speaks for itself. Any allegations  
6 inconsistent with the Scoreboard Fund Agreement are denied.

7           28.     In answer to Paragraph 28 of the Amended Complaint, Defendants state the  
8 agreement speaks for itself, and any allegations inconsistent with the agreement are denied.

9           29.     In answer to Paragraph 29 of the Amended Complaint, Defendants state the  
10 agreement speaks for itself, and any allegations inconsistent with the agreement are denied.

11           30.     In answer to Paragraph 30 of the Amended Complaint, Defendants admit the  
12 allegations of the first sentence. Defendants lack sufficient information to admit or deny the  
13 allegations in the second and third sentences, and therefore deny them.

14           31.     In answer to Paragraph 31 of the Amended Complaint, Defendants lack sufficient  
15 information to admit or deny the allegations and therefore deny them.

16           32.     In answer to Paragraph 32 of the Amended Complaint, Defendants lack sufficient  
17 information to admit or deny the allegations and therefore deny them.

18           33.     In answer to Paragraph 33 of the Amended Complaint, Defendants lack sufficient  
19 information to admit or deny the allegations and therefore deny them.

20           34.     In answer to Paragraph 34 of the Amended Complaint, Defendants lack sufficient  
21 information to admit or deny the allegations and therefore deny them.

22           35.     In answer to Paragraph 35 of the Amended Complaint, Defendants deny the  
23 allegations of the first sentence. Defendants lack sufficient information to admit or deny the  
24 allegations of the second sentence, and therefore deny them.

25           36.     In answer to Paragraph 36 of the Amended Complaint, Defendants deny the  
26 allegations.

1           37.     In answer to Paragraph 37 of the Amended Complaint, Defendants admit the  
2     allegations.

3           38.     In answer to Paragraph 38 of the Amended Complaint, Defendants admit the  
4     allegations.

5           39.     In answer to Paragraph 39 of the Amended Complaint, Defendants admit the  
6     allegations.

7           40.     In answer to Paragraph 40 of the Amended Complaint, Defendants deny the  
8     allegations.

9           41.     In answer to Paragraph 41 of the Amended Complaint, Defendants deny the  
10    allegations.

11          42.     In answer to Paragraph 42 of the Amended Complaint, Defendants lack sufficient  
12    information to admit or deny the allegations and therefore deny them.

13          43.     In answer to Paragraph 43 of the Amended Complaint, Defendants contend the  
14    statement does not require an answer.

15          44.     In answer to Paragraph 44 of the Amended Complaint, Defendants deny the  
16    allegations.

17          45.     In answer to Paragraph 45 of the Amended Complaint, Defendants assert the  
18    allegations are legal conclusions to which no response is required. To the extent a response is  
19    required, Defendants deny the allegations.

20          46.     In answer to Paragraph 46 of the Amended Complaint, Defendants deny the  
21    allegations.

22          47.     In answer to Paragraph 47 of the Amended Complaint, Defendants lack sufficient  
23    information to admit or deny the allegations and therefore deny them.

24          48.     In answer to Paragraph 48 of the Amended Complaint, Defendants lack sufficient  
25    information to admit or deny the allegations and therefore deny them.

1           49.     In answer to Paragraph 49 of the Amended Complaint, Defendants deny the  
2     allegations.

3           50.     In answer to Paragraph 50 of the Amended Complaint, Defendants contend the  
4     statement does not require answer.

5           51.     In answer to Paragraph 51 of the Amended Complaint, Defendants deny the  
6     allegations.

7           52.     In answer to Paragraph 52 of the Amended Complaint, Defendants lack sufficient  
8     information to admit or deny the allegations and therefore deny them.

9           53.     In answer to Paragraph 53 of the Amended Complaint, Defendants deny the  
10    allegations are legal conclusions to which no response is required.

11          54.     In answer to Paragraph 54 of the Amended Complaint, Defendants contend the  
12    statement does not require answer.

13          55.     In answer to Paragraph 55 of the Amended Complaint, Defendants assert the  
14    allegations are legal conclusions to which no response is required. To the extent a response is  
15    required, Defendants admit that the Debtor transferred \$625,000 to the Foundation, who in turn  
16    transferred such funds to Cal Poly, and deny every remaining allegation.

17          56.     In answer to Paragraph 56 of the Amended Complaint, Defendants deny the  
18    allegations.

19          57.     In answer to Paragraphs A through E of the Amended Complaint, Defendants  
20    deny the Plaintiff is entitled to any relief.

21                   **II.     AFFIRMATIVE DEFENSES**

22           1.     Plaintiff lacks standing and is barred from asserting any recovery of any transfers  
23    from Cal Poly because neither Plaintiff nor any creditor of the Debtor complied with the  
24    California Government Claims Act.

25           2.     Plaintiff has failed to state a claim for one or more of the causes of action asserted  
26    against Defendants.

1           3.       The transfers were taken for reasonably equivalent value, in good faith, and  
2 without knowledge of the voidability of the transfers.

3           4.       The transfers were taken for value, in good faith, and without knowledge of the  
4 voidability of the transfers.

5           5.       If any transfers are deemed avoidable, Defendants were good-faith transferees and  
6 are entitled, to the extent of the value given to the Debtor for each transfer, to: (a) a lien on or a  
7 right in any interest incurred, (b) enforcement of all obligations incurred, or (c) a reduction in the  
8 amount of liability on the judgment.

9           6.       Plaintiff's claims are barred by the doctrine of estoppel.

10          7.       Plaintiff's claims are barred by applicable statutes of limitation.

11          8.       Plaintiff's claims are barred by the doctrine of *res judicata*.

12          9.       Sovereign immunity bars all of Plaintiff's claims against Cal Poly.

13                               **III.   PRAYER FOR RELIEF**

14       WHEREFORE, Defendants respectfully pray for the following relief:

15          1.       Entry of a judgment denying all relief requested by Plaintiff and dismissing with  
16 prejudice all claims that were raised or could have been raised by Plaintiff in this adversary  
17 proceeding;

18          2.       An award of attorneys' fees and costs incurred by Defendants to the fullest extent  
19 allowed by contract, law, and equity;

20          3.       For permission to amend their pleadings to conform to the evidence at trial; and

21          4.       Such further relief as the Court may deem just and proper.  
22  
23  
24  
25  
26



1 DATED this 6<sup>th</sup> day of February, 2015.

2 CALIFORNIA STATE UNIVERSITY  
3 OFFICE OF THE GENERAL COUNSEL

4 /s/ Dawn S. Theodora

5 Dawn S. Theodora, CSB #131593

6 FOSTER PEPPER PLLC

7  
8 /s/ Christopher M. Alston

9 Christopher M. Alston, WSB #18823 (*Pro Hac*  
10 *Vice*)

11 Attorneys for Defendants the Board of Trustees of  
12 the California State University, which is the State of  
13 California operating in a higher education capacity,  
14 and includes California Polytechnic State  
15 University San Luis Obispo, and California  
16 Polytechnic State University Foundation  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1111 Third Avenue, Suite 3400, Seattle, WA 98101

A true and correct copy of the foregoing document entitled (*specify*): **ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On February 6, 2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Jeremy W. Faith – Jeremy@marguliesfaithlaw.com, Douglas D. Kappler – doug@marguliesfaithlaw.com, Meghann Triplett – Meghann@marguliesfaithlaw.com, US Trustee – ustregion16nd.ecf@usdoj.gov

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On February 6, 2015, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Peter H. Carroll, Chief Judge  
United States Bankruptcy Court  
1415 State Street, Suite 230  
Santa Barbara, CA 93201-2511

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 6, 2015  
Date

Lisa Cachopo  
Printed Name

/s/ Lisa Cachopo  
Signature